UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

J. S. CARAMBOLA, LLP d/b/a CARAMBOLA BEACH RESORT.

and

Case 24-CA-10951

OUR VIRGIN ISLAND LABOR UNION (OVILU)

MOTION SUBMITTING AMENDED COMPLAINT AND REQUEST FOR SUMMARY JUDGMENT BASED UPON MOTION PREVIOUSLY SUBMITTED AND ATTACHMENTS

Comes now Counsel for the Acting General Counsel and respectfully requests that the attached Amended Complaint and Notice of Hearing be made part of the record herein, and moves for Summary Judgment based upon its prior Motion for Summary Judgment and attachments dated August 8, 2008, and states as follows:

- Upon remand from the Court of Appeals for the Third Circuit for further proceeding consistent with the Supreme Court decision in New Process Steel L.P. v NLRB, 136
 Ct. 2635, the Board on August 6, 2010, issued a Decision, Certification of Representative and Notice to Show Cause in this proceeding. Copy of the Board's decision issued on August 6, 2010 is attached as Exhibit 1.
- 2. On September 3, 2010, the Regional Director for Region 24, issued an Amended Complaint and Notice of Hearing to conform the pleadings of the original Complaint issued on July 15, 2008, with the Decision, Certification of Representative and Notice to Show Cause issued by the Board on August 6, 2010. Copy of the Amended Complaint dated September 3, 2010, is attached as Exhibit 2.

WHEREFORE, as no new development had occurred during the pendency of this litigation and Respondent continues to refuse to recognize and bargain with Our Virgin Islands

Labor Union, the certified bargaining representative of the unit employees, Counsel for the Acting General Counsel moves for Summary Judgment based upon its prior Motion dated August 8, 2008 and attachments. It is noted, however that those arguments raised in paragraph (c) of the Motion for Summary Judgment are moot at this point of the proceedings, as the Certification of Representative dated August 6, 2010, was issued by a duly constituted Board.

RESPECFULLY SUBMITTED, at San Juan, Puerto Rico, this 7th day of September 2010.

Ana Beatriz Ramos-Fernandez

Counsel for the Acting General Counsel

National Labor Relations Board

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CERTIFICATE OF SERVICE

I hereby certify that the "Motion Submitting Amended Complaint and Request for Summary Judgment Based Upon Motion Previously Submitted and Attachments" has been served on the following parties via Electronic Mail:

Ricky Brown
Our Virgin Islands Labor Union
Electronic Mail: ovilu4u@msn.com

Charles E. Engeman, Esq. Electronic Mail: charles.engeman@odnss.com

Dated at San Juan, Puerto Rico this 7th day of September 2010.

Ana Beatriz Ramos-Fernandez
Counsel for Acting General Counsel

NOTICE This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

J.S. Carambola, LLP, d/b/a/ Carambola Beach Resort and Our Virgin Islands Labor Union (OVILU). Cases 24-CA-10951 and 24-RC-8577

August 6, 2010

DECISION, CERTIFICATION OF REPRESENTATIVE, AND NOTICE TO SHOW CAUSE

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER AND HAYES

On September 17, 2008, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 353 NLRB No. 8. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the Third Circuit, and the General Counsel filed a cross-application for enforcement. On June 17, 2010, the United States Supreme Court issued its decision in New Process Steel, L.P. v. NLRB, 136 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, the court of appeals remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has consolidated these proceedings and delegated its authority in both proceedings to a three-member panel.²

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. The Board's September 17, 2008 decision states that the Respondent is precluded from litigating any representation issues because, in relevant part, they were or could have been litigated in the prior representation pro-

ceeding. The prior proceeding, however, was also a twomember decision and we do not give it preclusive effect.

We have considered the postelection representation issues raised by the Respondent. The Board has reviewed the record in light of the exceptions and brief, and has adopted the hearing officer's findings and recommendations to the extent and for the reasons stated in the May 28, 2008 Decision and Certification of Representative, which is incorporated by reference.³

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Our Virgin Islands Labor Union and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees, including cooks, bartenders, housekeeping and laundry workers, receptionist, waiters, waitresses, and maintenance workers who are employed by the Employer at its facility in St. Croix, United States Virgin Islands; but excluding all other employees, guards, and supervisors as defined in the Act.

Notice to Show Cause

As noted above, the Respondent has refused to bargain for the purpose of testing the validity of the certification of representative in the U.S. Courts of Appeals. Although the Respondent's legal position may remain unchanged, it is possible that the Respondent has or intends to commence bargaining at this time. It is also possible that other events may have occurred during the pendency of this litigation that the parties may wish to bring to our attention.

Having duly considered the matter,

1. The General Counsel is granted leave to amend the complaint on or before August 16 to conform with the current state of the evidence;

355 NLRB No. 69 EXHIBIT 1

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases

² Consistent with the Board's general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the members who participated in the original decision Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board Members not assigned to the panel had the opportunity to participate in the adjudication of this case prior to the issuance of this decision.

³ In affirming the hearing officer's recommendation to overrule the objection to conduct by alleged Supervisor Lauritz Thompson, Member Hayes relies solely on the Respondent's failure to prove that Thompson made the statement in dispute

- 2. The Respondent's answer to the amended complaint is due on or before August 30; and
- 3. NOTICE IS HEREBY GIVEN that cause be shown, in writing, on or before September 7 (with affidavit of service on the parties to this proceeding), as to why the

Board should not grant the General Counsel's Motion for Summary Judgment. Any briefs or statements in support of the motion shall be filed by the same date.

Dated, Washington, D.C. August 6, 2010

Wilma B. Liebman,	Chairman
Peter C. Schaumber,	Member
Brian E. Hayes,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

UNITED STATES GOVERNMENT BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 24

J.S. CARAMBOLA, LLP, D/B/A CARAMBOLA BEACH RESORT

and

Case 24-CA-10951

OUR VIRGIN ISLANDS LABOR UNION (OVILU)

AMENDED COMPLAINT AND NOTICE OF HEARING

Our Virgin Islands Labor Union (OVILU), herein called the Union, has charged that Carambola Beach Resort, herein correctly designated J.S. Carambola, LLP d/b/a Carambola Beach Resort, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151 et seq., herein called the Act. Based thereon the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

- 1. The charge was filed by the Union on July 1, 2008, and a copy was served by regular mail on Respondent on July 2, 2008.
- 2. (a) At all material times Respondent, a U.S. Virgin Islands corporation, with an office and place of business in Davis Bay, St. Croix, U.S. Virgin Islands, herein called the hotel, has been engaged in the operation of a hotel and resort.
- (b) During the past twelve month period, Respondent, in conducting its business operations described above in paragraph 2(a), derived gross revenues in excess of \$500,000.

EXHIBIT 2

- (c) During the past twelve month period, Respondent, in conducting its business operations described above in paragraph 2(a), purchased and received at its hotel goods valued in excess of \$50,000 directly from points outside the U.S. Virgin Islands.
- 3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(a), (6) and (7) of the Act.
- 4. At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.
- 5. The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Section 9(b) of the Act:

All full time and regular part-time employees, including cooks, bartenders, housekeeping and laundry workers, receptionist, waiters, waitresses, and maintenance workers who are employed by the Employer at its facility in St. Croix, United States Virgin Islands; but excluding all other employees, quards, and supervisors as defined by the Act.

- 6. (a) On August 6, 2010, the Board issued a Decision, Certification of Representative and Notice to Show Cause, certifying the Union as the exclusive collective-bargaining representative of the Unit.
- (b) At all times since May 28, 2008, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.
- 7. (a) About June 16, 2008, the Union, by e-mail, requested that Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.
- (b) Since about June 25, 2008, Respondent, has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

- 8. By the conduct described above in paragraph 7, Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.
- 9. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for Respondent's unfair labor practices alleged above in paragraph 7, the Acting General Counsel seeks an Order requiring Respondent to bargain in good faith with the Union, on request, for the period required by Mar-Jac Poultry, as the recognized bargaining representative in the appropriate unit. The Acting General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the amended complaint. The answer must be <u>received by this office on or before September 17, 2010, or postmarked on or before September 16, 2010</u>. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at http://www.nlrb.gov, click on the E-Gov tab, select E-Filing, and then follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be

excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a amended complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may <u>not</u> be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the amended complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on a date to be designated subsequently, in St. Croix, United States Virgin Islands, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this amended complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

All parties are reminded of the National Labor Relations Board's standard procedures in formal unfair labor practice proceedings which provide that all exhibits

offered for evidence shall be filed in duplicate. In the event a duplicate copy of the exhibit which has been received in evidence has not been submitted to the Administrative Law Judge prior to the close of hearing, and the filling of said duplicate has not for good reason shown been waived by the Administrative Law Judge, any ruling receiving the exhibits may be rescinded and the exhibits rejected.

Dated at San Juan, Puerto Rico, this 3rd day of September 2010.

Marta M. Figueron

Marta M. Figueroa

Regional Director

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